

Before the
Federal Communications Commission
Washington, D.C. 20554

2006 JAN -9 P 5:01

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations.)

(Grapeland, Elgin, Burnet, Cameron,)

Calvert, Junction and Mason, Texas))

MB Docket No. 03-149

RM-10725

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 4, 2006**Released: January 6, 2006**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making* in this proceeding proposing the allotment of Channel 280A to Grapeland, Texas.¹ Elgin FM Limited Partnership ("Elgin FM") filed a Counterproposal. Munbilla Broadcasting Properties, Ltd. (Munbilla Broadcasting") filed Reply Comments. Robert Fabian filed Comments and a Motion to Dismiss Petition. For the reasons discussed below, we are dismissing the underlying proposal for a Channel 280A allotment at Grapeland and denying the Elgin FM Counterproposal.

Background

2. At the request of Robert Fabian, the *Notice* proposed the allotment of Channel 280A to Grapeland, Texas, as a first local service. In response to the *Notice*, Elgin FM, licensee of Station KKLK, Channel 223A, Elgin, Texas, filed a Counterproposal in order to permit relocation of the Station KKLK transmitter site and eliminate a short-spacing with Station KBKY, Channel 223A, Burnet, Texas. To this end, Elgin FM proposed the substitution of Channel 280A for Channel 223A at Burnet. In order to accommodate this substitution, Elgin FM proposed the substitution of Channel 280C3 for Channel 280C2 at Cameron, Texas, reallocation of Channel 280C3 to Calvert, Texas, and modification of Station KXCS license to specify operation on Channel 280C3 at Calvert. This reallocation conflicts with the proposed Channel 280A allotment at Grapeland as set forth in the *Notice*. Equicom Inc., licensee of Station KXCS has agreed to this reclassification and reallocation to Calvert. To accommodate the Channel 280C3 reallocation to Calvert, Elgin FM proposed the substitution of Channel 252A for vacant Channel 284A at Junction, Texas, and changing the reference coordinates for the vacant Channel 281C2 allotment at Mason, Texas. The Channel 280A substitution at Burnet is also short-spaced to Station KBPA (formerly KEYI), Channel 278C, San Marcos, Texas.

3. As requested by Robert Fabian in a Motion to Dismiss Petition, we are dismissing the underlying proposal for a Channel 280A allotment at Grapeland. In accordance with Section 1.420(j) of the rules, Robert Fabian has included an affidavit stating that he has not and will not receive any consideration for the withdrawal of his proposal.

4. We are also denying the Elgin FM Counterproposal. The proposed Station KKLK transmitter site increases a short-spacing with Station KYKM, Channel 223A, Yoakum, Texas. While not discussed

¹ *Grapeland, Texas*, 18 FCC Rcd 12690 (MB 2003).

by Elgin FM, LBR Enterprises, Inc. had filed a Counterproposal in a separate proceeding in MB Docket No. 02-248 proposing the substitution of Channel 280A for Channel 223A at Yoakum.² We will not process a rulemaking proposal contingent upon the outcome of a separate proceeding.³ In this regard, we also note that we did not substitute Channel 280A for Channel 223A in concluding MB Docket No. 02-248.⁴ In addition, the proposed Channel 280A substitution at Burnet is short-spaced to Station KBPA, Channel 278C, San Marcos, Texas. In its Counterproposal, Elgin FM refers to a separate rulemaking proposal for a Channel 291A allotment at Center Point, Texas. In order to accommodate this allotment, we issued an *Order to Show Cause* directed to Emmis Austin Radio Broadcasting Company, LP, licensee of Station KBPA.⁵ Although we have issued in a separate proceeding an *Order to Show Cause* why the Station KBPA license should not be reclassified to specify operation on Channel 278C0, the Station KBPA license has not yet been reclassified. As such, the Elgin FM Counterproposal also is impermissibly contingent upon the outcome of a separate proceeding. In addition, the Commission has specifically stated that the Class C0 reclassification procedure may be initiated only through the filing of a petition for rule making and not a counterproposal.⁶ Consistent with this Commission directive, we will not delay resolution of this proceeding based on a potential Station KBPA reclassification.⁷

5. Accordingly, IT IS ORDERED, That the proposal filed by Robert Fabian proposing a Channel 280A allotment at Grapeland, Texas, IS DISMISSED.

6. IT IS FURTHER ORDERED, That the Counterproposal filed by Elgin FM Limited Partnership IS DENIED.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

² *Smiley, Texas*, 17 FCC Rcd 16208 (MB 2002).

³ *See Stonewall, Mississippi, and Lisman, Alabama*, 11 FCC Rcd 3593 (MMB 1996).

⁴ *Smiley, Yoakum and Markham, Texas*, 19 FCC Rcd (MB 2004).

⁵ *Reclassification of License of FM Station KCYY, San Antonio, Texas, Station KELZ-FM, Terrell Hills, Texas, and FM Station KBPA, San Marcos, Texas*, 19 FCC Rcd 19482 (MB 2004).

⁶ *1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, 15 FCC Rcd 21649 (2000).

⁷ In its Reply Comments, Munbilla Broadcasting also referred to the proposed modification of the Station KXCS license to specify operation on Channel 280C3 at Calvert. In this regard, Munbilla Broadcasting contends that this proposal is fatally defective in that the licensee of Station KXCS, Equicom Inc., while agreeing to the downgrade and change in community of license as proposed in the Counterproposal, did not specifically consent to a change in the Station KXCS transmitter site. Munbilla Broadcasting correctly notes that we will not require a licensee to involuntarily relocate its transmitter site. *Claremore, Locust Grove and Nowata, Oklahoma, and Barling, Arkansas*, 3 FCC Rcd 4037 (MMB 1988). While not representing the degree of clarity that we expect regarding submissions in rulemaking proceedings, we do note that Equicom Inc. did specifically refer to the Counterproposal in this proceeding which identified a new transmitter site for Station KXCS. As such, we would not have dismissed the Elgin FM Counterproposal solely on this basis.

8. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

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